

REMARKS

The last Office Action of October 3, 2007 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claim 41 is pending in the application. No claims have been amended. Claim 41 has been canceled. Claims 42 and 43 have been added. A total of 2 claims is now on file. No amendment to the specification has been made. No fee is due.

It is further noted that claim 41 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 41 stands rejected under 35 U.S.C. §102(b) as being anticipated by Schirmbeck et al. (June 2001) J. Mol. Med., Vol. 79, 343-350 ("Schirmbeck").

Record is made of a second interview conducted by phone with applicant's representative and the Examiner on November 20, 2007. During the phone interview the application was extensively discussed. The Examiner is thanked for her help and assistance as well as the courtesies extended to counsel at that time. In particular, applicants' representative proposed to provide claims that are further amended in order to expedite the prosecution.

Specifically, during the interview applicant proposed two sets of claims, claim 42 and claim 43, with new claim 42 incorporating the elements of claim 41 and the limitations of former claim 34 (which was listed in the amendment submitted by applicant on January 22, 2007) and new claim 43 would incorporate the elements of claim 41 and the limitations of former claim 38 (which was listed in the amendment submitted by applicant on January 22, 2007).

Applicant's representative also addressed the rejection under U.S.C. §112, second paragraph and that the claims would be amended accordingly.

The Examiner agreed to the proposed claims of the scope as set forth. In addition, it was agreed by the Examiner and applicant's representative that the

wording in claim 38 of “comprising” (now part of claim 43) would remain pending an updated search by the Examiner.

Based on the Examiner’s agreement, applicant now submits claims 42 and 43 which are in immediate condition for allowance, save for the proviso concerning “comprising”.

Furthermore, applicant also drafted the claims to avoid the rejection under 35 U.S.C. §112, second paragraph and 35 U.S.C. §102(b).

REJECTION OF CLAIM 41 UNDER 35 U.S.C. §112, FIRST PARAGRAPH

Applicant has cancelled claim 41 in favor of newly drafted claims 42 and 43 to address the problems raised by the Examiner regarding claim 41. Applicant has drafted the new claims to positively set forth the step of administering the vaccine. These changes are self-explanatory and cosmetic in nature and should not be considered as a narrowing amendment to trigger prosecution history estoppel. As such, it is submitted that the claims are now definite and that the rejection is therefore moot.

As a result of the cancellation of claim 41 the rejection under 35 U.S.C. §112, second paragraph has become moot.

REJECTION OF CLAIM 41 UNDER 35 U.S.C. §102(b) AS BEING ANTICIPATED BY SCHIRMBECK

The rejection under 35 U.S.C. 102(b) has become moot in view of claim 41 having been canceled.

Withdrawal of the rejection of claim 41 under 35 U.S.C. §102(b) is thus respectfully requested.

The new claims 42 and 43 distinguishes over the prior art as discussed with the Examiner on November 20, 2007. Schirmbeck does not disclose an

intradermal application of a vaccine of the type as presently claimed. Therefore the claims as presently set forth patentably distinguish over the cited prior art.

PRIORITY

Applicant is in the process of procuring the proper priority document. As is customary in the German Patent Office, older patent document are routinely destroyed. Applicant is doing everything to obtain the requisite copy and will submit it as soon as it is received together with a suitable translation.

CONCLUSION

Applicant believes that when reconsidering the claims in the light of the above comments, the Examiner will agree that the invention is in no way properly met or anticipated or even suggested by any of the references however they are considered.

None of the references discloses a method as claimed to administer a vaccine of the type as set forth in claim 42 and 43.

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

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Appl. No: 10/816,465

Respectfully submitted,

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